IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WA. No. 53 of 2007()

AGAINST THE JUDGEMENT IN OP.2824/1996 Dated 16/11/2006
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APPELLANT: PETITIONERS
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1. CHERIAN P. VARGHESE (DIED),
M/S. PREMIER RUBBERS & TRADES, KOTTAYAM.

2. JIJO CHERIAN VARGHESE, S/O. LATE CHERIAN
P. VARGHESE, PREMIER HOUSE, S.H.MOUNT P.O.,
KOTTAYAM.

3. JOJO ALEXANDER VARGHESE,
S/O. LATE CHERIAN P. VARGHESE,
PREMIER HOUSE, S.H.MOUNT P.O., KOTTAYAM.

BY ADV. SRI.N.D.PREMACHANDRAN

RESPONDENTS: RESPONDENTS
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1. DEPUTY COMMISSIONER,
INCOME TAX ASSESSMENT, SPECIAL RANGE,
KOTTAYAM.

2. THE COMMISSIONER OF INCOME TAX,
TRIVANDRUM.

BY ADV. SRI.P.K.RAVINDRANATH MENON (SR.)
SRI.GEORGE .K.GEORGE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 18/01/2007, THE COURT ON 09/02/2007 DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN, Ag. C.J. & M.N. KRISHNAN, JJ.

Writ Appeal No 53 of 2007

Dated: 9th February 2007

JUDGMENT

Radhakrishnan, Ag. C.J.

This appeal is preferred against the judgment in O.P. No 2824 of 1996. Writ petition was preferred seeking a writ of certiorari to quash Ext. P7 order passed by the Commissioner on 12.10.1995 and also for a direction to the respondents not to take any recovery proceedings pursuant to Exts. P1 and P7. Learned single judge felt that sufficient facts are not available for this court to take a decision on the various contentions raised by the petitioner and consequently remanded the matter to the assessing authority for fresh decision in accordance with law. Reference was also made to the decision of this court in Commissioner of Income-tax v. V.I. Baby (2002) 254 ITR 248).

2. When the matter came up for hearing, we heard learned counsel for the appellant as well as the learned Standing Counsel for the Department. Detailed argument notes was submitted by the counsel for the appellant. Reference was also made to the decisions placed before the learned single

judge. We have gone through the argument notes as well as the grounds in the appeal. We endorse the view of the learned single judge that it is appropriate that the matter be remitted back to the assessing authority for fresh consideration since disputed questions of fact are involved. It is open to the appellant to raise all their contentions before the assessing authority and the assessing authority will take a decision in accordance with law. Since the assessment relates to the year 1989-1990 we are inclined to direct the assessing authority to pass fresh orders within three months from the date of receipt of a copy of this judgment. Till that time coercive steps, if any, taken to recover the amount from the appellant shall be kept in abeyance. The appeal is disposed of as above.

Sd/-
(K.S. RADHAKRISHNAN, Ag. C.J)

Sd/-
(M.N. KRISHNAN, JUDGE)

09/02/2007
en/

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